

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ANTHONY ARRIAGA,

Plaintiff,

v.

ORDER OF SERVICE

20-CV-06992 (PMH)

JOANA OTAIZA; DONALD VENETTOZZI,

Defendants.

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PHILIP M. HALPERN, United States District Judge:

Plaintiff, currently incarcerated at Sing Sing Correctional Facility, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants violated his constitutional rights. By order dated August 31, 2020, the Court granted Plaintiff's request to proceed without prepayment of fees, that is, *in forma pauperis*.¹ The Court directed the U.S. Marshals Service to effect service on both Defendants, but on October 19, 2020, the Court received a Marshal's Process Receipt and Return of Service form, indicating that service on Defendant Otaiza was unexecuted. (Doc. 9). Plaintiff then submitted a letter requesting that Defendant Otaiza be served at a residential address. (Doc. 10).

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service. *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) ("The officers of the court shall issue and serve all process . . . in [IFP] cases."); Fed. R. Civ. P. 4(c)(3) (the court must order the Marshals Service to serve if the plaintiff is authorized to proceed IFP)).

¹ Prisoners are not exempt from paying the full filing fee even when they have been granted permission to proceed *in forma pauperis*. *See* 28 U.S.C. § 1915(b)(1).

Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that the summons and complaint be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and complaint until the Court reviewed the complaint and ordered that a summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued. If the complaint is not served within that time, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that it is the plaintiff's responsibility to request an extension of time for service); *see also Murray v. Pataki*, 378 F. App'x 50, 52 (2d Cir. 2010) ("As long as the [plaintiff proceeding IFP] provides the information necessary to identify the defendant, the Marshals' failure to effect service automatically constitutes 'good cause' for an extension of time within the meaning of Rule 4(m).").

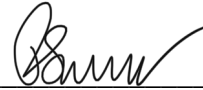
To allow Plaintiff to effect service on Defendant Joana Otaiza through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a new U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for this defendant with the following address: NY State Department of Correction and Community Supervision (DOCCS), 1220 Washington Ave., Building 2, Albany, New York 12226-2050. The Clerk of Court is further instructed to issue a summons and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon this defendant.

If the Marshals Service is unable to serve Defendant Otaiza at the address for DOCCS in Albany, the Court will issue an order, pursuant to *Valentin v. Dinkins*, 121 F.3d 72, 76 (2d Cir. 1997), directing the New York State Attorney General to identify a residential address where this defendant can be served.

The Clerk of Court is directed to mail a copy of this order to Plaintiff, together with an information package. The Clerk of Court is further instructed to complete a new USM-285 form with the address for Defendant Joana Otaiza and deliver to the U.S. Marshals Service all documents necessary to effect service.

Dated: New York, New York
November 10, 2020

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Philip M. Halpern', written over a horizontal line.

Philip M. Halpern
United States District Judge

DEFENDANTS AND SERVICE ADDRESSES

Joana Otaiza
Commissioner's Hearing Officer
NYSDOCCS
1220 Washington Ave., Building 2
Albany, New York 12226-2050